

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MCCARTON N. PIERRE,)	
Plaintiff,)	
)	C.A. No. 23-262 Erie
v.)	
)	District Judge Susan Paradise Baxter
SGT. BRIAN BATES,)	Magistrate Judge Patricia L. Dodge
Defendant.)	

MEMORANDUM ORDER

Plaintiff McCarton N. Pierre, an inmate formerly incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”),¹ commenced this *pro se* civil rights action on August 30, 2023, against the Pennsylvania Department of Corrections (“DOC”) and several DOC employees staffed at SCI-Albion. This matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.²

Plaintiff subsequently filed an amended complaint on January 29, 2024, naming Sgt. Brian Bates, a corrections officer at SCI-Albion, as the sole Defendant. [ECF No. 20]. Construed liberally, the amended complaint asserts the following claims against Defendant Bates in both his individual and official capacities: (1) an Eighth Amendment excessive use of force claim stemming from Defendant’s own alleged actions; (2) an Eighth Amendment claim alleging

¹
Plaintiff is currently incarcerated at the State Correctional Institution at Fayette in LaBelle, Pennsylvania.

²
On October 17, 2024, this case was reassigned to U.S. Magistrate Judge Patricia L. Dodge as the referral judge.

Defendant's failure to protect Plaintiff from the use of excessive force by other corrections officers; (3) a retaliation claim; and (4) a Fourteenth Amendment equal protection claim.

On August 29, 2024, Defendant filed a partial motion to dismiss [ECF No. 34], seeking dismissal of Plaintiff's official capacity and equal protection claims only. Without awaiting a response from Plaintiff, Chief Magistrate Judge Lanzillo issued a Report and Recommendation ("R&R"), dated September 19, 2024 [ECF No. 39], recommending dismissal of Plaintiff's official capacity claims against Defendant under the screening provisions of 28 U.S.C. §§ 1915(E)(2)(b) and 1915A(b), and recommending denial of Defendant's motion to dismiss Plaintiff's Fourteenth Amendment equal protection claim. Objections to the R&R were due to be filed by October 7, 2024; however, no timely objections have been filed to date.

Thus, after *de novo* review of the relevant documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 16th day of December, 2024;

IT IS HEREBY ORDERED that Plaintiff's official capacity claims against Defendant are DISMISSED pursuant to 28 U.S.C. §§ 1915(E)(2)(b) and 1915A(b), and Defendant's motion to dismiss Plaintiff's Fourteenth Amendment equal protection claim [ECF No. 34] is DENIED. The report and recommendation of Chief Magistrate Judge Lanzillo, issued September 19, 2024 [ECF No. 39], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge